

DOCUMENT RESUME

ED 279 559

SO 017 641

AUTHOR Flinders, Neil J.; Hilton, Matthew M. F.
 TITLE Acting to Protect the Cultural and Legal Foundations of the Family in an Increasingly Alien Intellectual and Legal Environment.
 PUB DATE 86
 NOTE 13p.; Paper presented at a Conference on Education and the Family (Provo, UT, February 5, 1986).
 PUB TYPE Journal Articles (080) -- Speeches/Conference Papers (150)
 JOURNAL CIT Family Perspective; v20 n2 p105-115 1986
 EDRS PRICE MF01/PC01 Plus Postage.
 DESCRIPTORS Cultural Background; *Educational Philosophy; Higher Education; *Public Education; Traditional Schools

ABSTRACT

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ED279559

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of the Family in an Increasingly Alien Intellectual
and Legal Environment

FAMILY PERSPECTIVE
Volume 20, Number 2, 1986

Brigham Young University

College of Family, Home, and Social Sciences

Family and Demographic Research Institute

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Acting to Protect the Cultural and Legal Foundations of the Family in an Increasingly Alien Intellectual and Legal Environment

Neil J. Flinders and Matthew M. F. Hilton

Western intellectual heritage is characterized by a gradual but significant shift from a supernatural to a naturalistic worldview between 1880 and 1920. With the ascendancy of the naturalistic worldview, various conflicting ideas emerge about the place and proper function of the family and the educational institutions. The social and legal implications of these cultural conflicts are discussed. Implications for legal and social action aimed at strengthening the tie between the family and traditional education are identified.

Part I: Overview

The Shift from Story A to Story B

Every culture has a story that it tells its people, a world view that explains reality. In addition to providing constituents with a particular version of reality, each culture strives to legitimize its story with certain sanctions and to transmit appropriate tools and skills for survival. Frequently, variations of the story will emerge within a culture. Sometimes, though not very often, a culture will change the very foundations of

its story. This happened in Western culture near the turn of this century; the premise of its story shifted from A to B, from a supernatural to a naturalistic explanation. Man and nature prevailed. In a public sense, God became irrelevant.

In 1970 Irving Werstein published a little book for young people entitled *Shattered Decade—1919–1929*. On the dustcover was a list of conditions descriptive of the Roaring Twenties. Following the list was the conclusion that "almost all the conditions facing the country in the 1970s began to come into focus fifty years ago." In the forepart of his book the author describes the radical changes occurring in American society during the 1920s. He notes the emergence of a new spirit characterized by a popular song title of the day: "How Ya Gonna Keep 'Em Down on the Farm, After

Neil J. Flinders, Ph.D., is an assistant professor of secondary education, Brigham Young University, Provo, UT 84602; and Matthew F. Hilton, Ph.D., is an attorney-at-law in Salt Lake City, UT.

Paper presented at the Conference on Education and the Family, sponsored by the Family and Demographic Research Institute, Brigham Young University, Provo, Utah, February 5, 1986.

They've Seen Pree?" His insightful conclusion was, "Obviously the old order had changed."¹

Werstein's work was not a scholarly study. It simply acknowledged the massive shift in Western culture's basic assumptions that culminated in the United States at the turn of the century. He described plainly some social extensions of the changing values that followed the switch from a supernatural to naturalistic worldview. The change was not sudden; it had been in the making for several centuries. It was the last and most dramatic of four significant reconciliations within the Western intellect. Our thesis is that between 1880 and 1920, Western culture formally adopted enough new answers to the old questions that it was no longer necessary to postulate a supernatural force to explain man and the universe. The idea of God as a first cause or as an intervening agent became obsolete.² Value judgments related to this shift are varied because it entails both positive and negative factors, but the consequences are indisputable.

Four Reconciliations—The Storyline of Western Culture

From a traditional point of view, Western culture was the result of the reconciliation of Hebrew-Christian teachings with classical Greek science and philosophy—modifying Christian ideas to fit the Greek metaphysics of Plato. This was the first great reconciliation. St. Augustine articulated this merger in his writings, and medieval Christianity flowered.³

A second reconciliation occurred when medieval Christianity (Augustine's Platonic Christianity) was modified by the 12th-century Aristotelian views of the Scholastics. The merger is typified in the

writings of Thomas Aquinas. This development set in place forces that ultimately culminated in the Enlightenment, Renaissance, and Reformation.⁴

The third reconciliation emerged when Thomistic Catholicism (Scholasticism) was displaced by the new science of Descartes, Copernicus, Galileo, Newton, etc.—the pioneers of modern science. Empirical observations buttressed by new mathematical tools replaced the pure logic of an Aristotelian rationale. Each of these systems of thought, however, invoked reliance on some supernatural First Cause to hold together man's conceptions of the universe.⁵

The fourth reconciliation was the most radical. During the late nineteenth and early twentieth centuries, a new intellectual power structure emerged. Traditional views were set aside; the idea of a deity, a first cause, and many of the sacred tenets of Hebrew-Christian religious thought (e.g., the Fall and the Atonement) were rejected in favor of an exclusively naturalistic and humanistic science—one not needing a supernatural deity or force for its existence or function.⁶

Ignoring the Foundations of Our Intellectual Heritage

Although it represents perhaps the single greatest issue in the history of Western culture, the storyline outlined and footnoted above is essentially ignored in the curriculum of contemporary public education. This is not due to a dearth of available data. One could go into any large library with a wheelbarrow and soon fill a pickup truck with books written before (and many after) the 1930s that reflect the intense intellectual battle waged over this shift. It appears, however, that once the battle was decided, the winners chose to cease dis-

cusssing the conflict. Apparently they saw little reason to continue describing a Story-A view of the world after Story B was embraced as the prevailing intellectual view.

The reader who desires to sample the commentary on both sides of the fence might consider the following sources as an introduction. Rudyard Kipling's poem "The Gods of the Copybook Headings" (1919) colorfully describes the outcome if society rejects the sacred and embraces the secular values. Walter Lippmann (1929), in clear and lucid language, acknowledges the "Dissolution of the Ancestral Order" by the "acids of modernity" and describes "The Foundations of Humanism" that were to undergird modern society. J. H. Randall, Jr. (1926), in his *The Making of the Modern Mind*, meticulously follows the change in belief systems that moved the modern intellect away from religions of faith and revelation toward modern declarations like *The Humanist Manifesto* (1933, 1973). C. S. Lewis (1947), distressed over the assumptions of a new school curriculum in England, penned his famous essay *The Abolition of Man*. In this document he argues that the rejection of the supernatural worldview will create "men without chests"—creatures dominated by intellects and reproductive organs, devoid of feeling and reverence. This is not the stance of Daniel Kulp II (1932), an educational sociologist at Columbia University Teacher's College, who heralded the new naturalism and defended its relativistic morality as the only means of creating a more mature society.⁷

More contemporary commentary on the shift can be found in studies like G. Benson and T. Engeman's *Amoral America*, Daniel Yankelovich's *New Rules in American Life*, M. Harris's *Why American Changed: Our Cultural Crisis*, Morris Berman's *The Re-en-*

chantment of the World, and Mary Lystad's *From Dr. Mather to Dr. Seuss: 200 Years of American Books for Children*—all written since 1975. An abundance of past and present literature describes this shift, but today's students are seldom invited to reconsider the choice, and implications of that choice, made by their progenitors, which relegates religion and its traditional social values to the domain of private knowledge.

Peter Dobkin Hall (1982) describes this shift and its consequences in perhaps as practical a way as any contemporary student of the sociopolitical scene. In his extensive and detailed study *The Organization of American Culture: 1700–1900*, he points out that the "political revolution [1776] was not accompanied by a moral one." The founding fathers, expecting this moral revolution, created a form of government they hoped would accommodate it. The fact that this moral revolution did not occur left the promise of American Life unrealized. Hall points out that Abraham Lincoln's "problem" was the consequence of the mass of the American people becoming

a universe of social, economic, and political particles in bewildering constant motion, [each going] their own infinitely diverse ways. Attempts to bridge the gap to articulate the relation between the more elite and the masses, whether through evangelism, education, benevolent institutions, or moral reform, had been only partially successful. The nation was deeply divided. The core issue was the relation between 'right principle' and 'self interest.' . . . For Lincoln, as for the Standing Order of the late eighteenth century, the voice of the people was not the voice of God. And the nation, as it moved toward Civil War, was divided over this question. Where was the voice of God? What constituted authority? By the

1850s, the answer to this question was far less simple than it had been in 1800. By the middle of the century, religion had become a babel of creeds; economic life . . . competitive and tumultuous; politics, a matter of pandering to the lowest common denominator.

The solution to the dilemma, according to Hall's study, was the development of an American elite educated in universities like Harvard and Yale. These "men of affairs" were trained by teachers committed to social Darwinism. They established networks of nationalized corporate institutions that gave America the new foundation for authority that she needed. Hall observes that

neither Eliot [Charles W.—President of Harvard] nor his allies at Harvard and elsewhere had any illusions about the ease with which they could proceed from their ideas about the resynthesis of authority to the reality of a national order. Thanks to the [Civil] war and to the social reading of Darwin, they could redefine their ideas about the locus of authority, shifting it from politics and religion to science, the world of matter in which the voice of God expressed itself far more authoritatively than through the voice of the people. This shift altered the public perception of the relation between wealth, ideas and power. The war was a lesson. Darwinism was a text.

But as Darwinists, Eliot and his allies could see that the historical process was open-ended. Redemption, even in secular terms, was never sure. And the most one could do in seeking to be the instrument of higher principles was to institutionalize one's relation to them by creating situations in which people could study science—social science, economic science, political science, the whole realm of matter included [in] both basic chemical and biological processes as well as human ones—and could translate what they found into organizational reality.

Eliot and the men of his generation had succeeded in resynthesizing morality and matter. But the key to the synthesis was the institutional context in which one studied the matter. And as the first fifty years of the nineteenth century had shown, that institutional context would have to be extended out into the whole of American life if it was to become genuinely effective. The War, the text, and the private institution were only the starting points of the process of realizing the promise of American life.⁸

Public Education—the Means to the End

If one accepts Hall's analysis, the history of education in America becomes clearly the idea of a tax-supported, government-controlled, public school system as the ideal mechanism to expose the masses to the principles of science. These principles, initially identified as the voice of God expressed through matter, were the people's link to the unifying authority so necessary to assure the success of the American experiment. As already explained, the notion of a supernatural entity soon disappeared from the academic intellectual structure of Western culture. The hope was that naturalistic science could succeed where religion and politics had failed; and this hope has sustained a remarkable educational enterprise.

What is remarkable about the American public school system is not the criticism it has attracted, or the professional elation and despair that seems to ebb and flow within it, but the continuity of public support it receives. All evidence to the contrary, Americans have, in the face of considerable criticism and some foreboding, strongly supported their public schools—to the extent of about \$127 billion annually.

The percentage of 17-year-olds who graduate from high schools each year has risen from 48% to

75%, from just over 1 million in 1946-47 to over 3 million in the early 1980s—an extraordinary achievement. An increasing number of these youths have come from backgrounds that are educationally and culturally disadvantaged.⁹

In spite of these tremendous accomplishments, as recently as 1979 only 20% of a national sample of 16,000 high school seniors reported they were “completely satisfied” with their educational experience.¹⁰ Numerous subsequent studies, polls, and reports support the inference that our nation’s educational enterprise reflects a deep conflict of values.¹¹ It is the social and legal implications of these cultural conflicts that we now will address.

Part II: A Strategy for Action

The Primary Issue

Many contemporary discussions on the legal aspects of education as they relate to the family seem to focus on (a) allegedly religious activities in the school or (b) amoral instruction that infringes on someone’s personal beliefs. These issues often arise when legislative or judicial bodies review items such as prayer in school, sex education, a moment of silence, or saluting the flag. We have chosen not to approach the problem at this level of the issue. We believe these are all symptoms of a more basic problem.

From our perspective, the central legal issue can be expressed in the form of a resolve that has been actively debated for the past 100 years: *Schools, as representatives of the family, should as a matter of law pursue curriculum objectives that support the traditional values on which the American nation was founded, because people, individually and as families, are capable of choosing and are entitled to choose, to internalize moral values that will*

sustain a free republic. We maintain that to the extent these values are not made available to the populace through public, private, and home education, but instead are denied, ridiculed, removed, or otherwise obfuscated by law from public awareness, then the opportunity for the rising generation to choose them is seriously circumscribed. When the vacuum of an alleged value-free context is adopted as a matter of law, people are neither free nor are they ruled by law.

Present Circumstances

Our story that relates the shift from Story A to Story B has in fact been an ongoing battle over the ideas and truths that men are exposed to. As noted, the battle fought in academia heavily favors the nontraditional, Story B analysis. Those who favor this story are, as it were, in control of modern American academia. Much of the contemporary legal fight focuses on lingering manifestations of the earlier battle waged in academia.

Since the outcome of the preliminary skirmish at the university level appears to have been decided, many of the combatants have moved to the legal arena to seek restraint or additional advantage. While part of the issue is an effort to insure that the traditional Story A is taught, rather than that there is opportunity to teach both Story A and Story B, the primary conflict in the legal arena has arisen because of efforts to prevent Story A from being taught at all. This is most clearly evident in two major legal arenas—the federal courts and the state legislatures. While some may feel that the decision against traditional Story A is final, the more careful analysis reveals a significant actual and potential opportunity for the encouragement and reestablishment

of the traditional story and its inherent values for American education.

The battle between the state and federal government takes place in two basic arenas. In the federal courts, the federal government, using the supremacy clause of the United States Constitution and *stare decisis* under the First and Fourteenth Amendments, has chosen to strike down many state efforts to insure that (1) the traditional values associated with Story A be included in the schooling of their children, and (2) those values contrary to it not be promoted with tax dollars. A fairly recent example of this conflict is the United States Supreme Court case of *Board of Education, Island Trees Union Free School District v. Pico*, 457 U.S. 853 (1982). The plurality opinion found that students had a right to have access to books that were apparently erroneously placed in the library of the Plaintiff School District without adequate examination by the school board. Offensive portions of the literature were brought to the attention of the board, removed for review by a citizen committee, and thereafter permanently removed from the library by action from the board. Even though the Supreme Court found almost unfettered discretion for the school board to set curriculum in the classroom, it found that the school board could not remove the books the school district had placed in the library, if at the time of removal the school district disagreed with the ideas in the books. The fact that the books had been found to be vulgar, and that the school district did not have a duty to place any books in the library in the first place, did not seem material to the plurality. This type of decision making illustrates the recent trend of federal court cases in which courts have taken upon themselves to determine sensitive matters of value and content

in education on federal constitutional grounds. (Ironically, five of the nine justices found no student right to unlimited materials in the school library. Legal maneuvering determined the pronouncement of the court.) Unfortunately, this intrusion into local and state matters is not an isolated case.

Since 1648 through 1985, 216 state court cases have addressed content of school curriculum. Of these, 152, or 70%, have arisen in the last 20 years. During the same period, 119 federal cases have arisen; 112, or 94%, have been litigated in the last 20 years. These figures illustrate two things. First, during the last 20 years significant questions relative to curriculum, course content, and funding have been resolved by litigation rather than by political decision making. Second, during this time period, involvement of federal courts in this process has significantly increased. Since the federal courts enjoy both numeric and legal supremacy because of the supremacy clause of the U.S. Constitution, it would appear that the federal courts now have the offensive edge in this battle.

Because of actions taken by federal courts and those imposed by implicit agreement to federally funded programs, states appear to have sacrificed a significant portion of their Tenth Amendment flexibility to determine and set curriculum objectives. This abandonment is particularly disturbing because the United States has not only disavowed any federal guarantee of a right to an education (see *San Antonio School District v. Rodriguez*, 411 U.S. 1, 1973), but many of the respective state constitutions and statutes provide that specific curriculum objectives, favoring the traditional Story A American values, will be taught in the schools of their state.

Fifteen of the states have constitutional provisions that not only seem to outline a call for education that supports the traditional Story A, but often explain why this is essential to the preservation of American liberties and freedoms. The Arkansas Constitution succinctly observes that

[I]ntelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free schools. (Article XIV, Section 1)

The North Dakota Constitution gives a more comprehensive rationale:

A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools. (Article VIII, Section 1)

The Indiana Constitution found it necessary to define the general areas of learning essential in the school system to further these values:

Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools. (Article 8, Section 1)

Some states that have chosen not to address these matters in their constitution have focused directly on them in their statutes. In 1949, the state of New York enacted legislation that provided that

[I]n order to promote a spirit of patriotic and civic service and obligation and to foster in the children of the state moral and intellectual qualities which are essential in preparing to meet the obligations of citizenship in peace or in war, the regents . . . shall prescribe courses of instruction in patriotism and citizenship, to be maintained and followed in all the schools of the state. (See NY Education Law, Section 801)

In 1975, South Dakota re-enacted a 1901 statute for the eighth time that required "moral instruction" in the school:

In addition to other courses, there shall be given in all public and nonpublic elementary and secondary schools in the state, special moral instruction intended to impress upon the minds of the students the importance of truthfulness, temperance, purity, public spirit, patriotism, respect for honest labor, obedience to parents, respect for the contributions of minority and ethnic groups to the heritage of South Dakota, and due deference for old age. (See S.D. Comp. Laws Ann. Section 13-33-6)

Most recently, in 1985, the state of Tennessee enacted legislation that required the State Board of Education to provide methods of instruction for grades K through 12 in public schools, including

character education to help each student develop positive values and to improve student conduct as students learn to act in harmony with their positive values and learn to become good citizens in their school, community and society. (See Tenn. Code Ann. Section 49-6-1007)

Another statute requires that courses of study adopted by the high schools on the recommendation of the superintendent of schools shall provide for character education (ibid. at Section 49-6-1201).

These constitutional and statutory provisions—and many others that time will not allow us to cite—are evidence of a significant reservoir of legal justification for state and local educators and school board members to insure that Story A curriculum objectives remain in public and private schools. Ongoing research, which we anticipate to complete this summer, is examining what states have in fact implemented to satisfy the constitutional and statutory provisions that call for curriculum objectives that accord with the traditional Story A criteria.

The fact that these statutory and constitutional provisions have not been significantly used in court proceedings to defend traditional values in educational curriculum may occur because of two problems. First, many educators, parents, and school board members do not understand the legal significance of what is occurring in the federal courts, or worse yet, that it is going on at all. The statistics cited illustrate that in the last 20 years, a major power shift in determining these education policies has occurred: the federal courts are assuming this power. It appears that educators and parents—not to mention states—have been allowing their rights, powers, and responsibilities to be usurped by others.

Second, because academia has shifted to Story B values, there is a dearth of research substantiating the practical societal worth of Story A values. With the absence of this support, those who understand the legal-federal shift have little empirical evidence to support their case. The practical suggestions that follow (1) tell how the forces supporting nontraditional values can be seen for what they are and (2) describe realistic preparations that can be undertaken to defeat them.

Key Questions

To aid those who want to understand the legal significance of a law (whether it be a statute, a judicial opinion, or administrative regulation), we will apply a two-question test to what has occurred. When you read or learn of a newly proposed statute, regulation, or judicial decision involving curriculum objectives, ask yourself these two questions, in this order:

1. Does the law create a right with attendant responsibility, or does it establish license in a person or institution without imposing or requiring additional restraint?

If the law recognizes "rights" without imposing additional responsibilities or recognizing the social need for restraint, the law creates legal license and not legal liberty. This is not in accord with Story A values.

2. Does the law prohibit the teaching or practice of traditional values as either a means to achieve an educational objective or as an end of education in the form of character development, because (a) the recognized rationale does not accord with the modern mind-set as expressed through judicially created analytical techniques, or (b) modern research does not validate those values?

If the law examined creates license rather than responsible liberty, or prohibits prior practice because the rationale articulated at the time of its adoption does not accord with more recent judicially created analytical techniques or current scientific thought, you must know that it either is used, or will be used, as a weapon against those who wish to insure that the character traits encouraged by Story A are promoted in the curriculum of American education. The past 20 years of federal intrusion in education, as well as the confusion in some state legisla-

tures over the continuation of Story-A education, illustrates that many of the recent legal pronouncements fail the test.

Guidelines for Action

Assuming that one is not involved in the actual litigation or legislation giving rise to these challenges (and if you are, you had better be morally and financially committed), two options still are open to all persons concerned with educational objectives that encourage and support the traditional values we have noted.

The first option involves examining the present statutes and constitutional provisions in your own state that address these questions. If you have none, or have those that appear to promote and encourage only nontraditional values, the statutes and constitutional provisions we have cited provide good models that can be proposed to various legislative bodies or adopted by referendum. After one is confident that these provisions are in fact established as a matter of state law, the next step is to see how respective state and local educational authorities have implemented these provisions.

The second option is to collect and develop research that validates the achievement of that character development that underlies and is the encouraged outcome of both the traditional Story A and the American experiment in a morally based freedom.

Obtaining the factual and "scientific" data necessary to demonstrate both a correlation and justification for the programs enacted in accord with the statutes and constitutions is essential as a major preventive measure. Many legal battles have been lost because those groups adopting a good law have failed either to demonstrate (1) that clear societal benefits will arise from the achievement of the character ends implicit

in its values, or (2) that the means selected to achieve these ends do, in fact, achieve the ends sought. In some cases, even if many federal courts had not imposed an after-the-fact, judicially created analysis to strike down a significant portion of the legislation and other laws that supported Story A, much of what exists in present law was initially done when the assumptions in Story A were accepted and believed. Inasmuch as many no longer accept these assumptions, and require judicial decision making after demonstrable "proof" to justify such a position, it is critical (1) that these challenges be anticipated before legal attack begins and (2) that "proof" of the desirability of the means and ends be established by academia and articulated as a portion of the justification when laws are enacted to favor the traditional Story A.

While substantive change in academia may require new scholarship and fresh outlooks, those attending this conference are ample evidence that there are many with competent research skills who can begin and continue the needed research and documentation.

New constitutions and new legislation—all enacted with careful documentation that supports the end and the means—can serve to distinguish, on legal and factual grounds, prior federal case law from the new legislation. This is one of the few ways to overcome what can be the tyranny of *stare decisis* in the federal court arena.

Our brief summary today is a distillation of past and ongoing research. The very real nature of the actual conflict in which we are involved should be evident in both the historical perspectives and litigation figures we have reviewed. The ramifications of a defeat in the final arenas of the states, school boards, and families are profound for all of

us—whether we be present or future children, parents, and Americans. In 1980 Spencer W. Kimball well observed the tenor of the times and the nature of the practical tragedies that arise from the conflict in which we are engaged:

[M]any of the social restraints which in the past have helped to reinforce and to shore up the family are dissolving and disappearing. The time will come when only those who believe deeply and actively in the family will be able to preserve their families in the midst of the gathering evil around us.

*Whether from inadvertence, ignorance, or other causes, the efforts governments often make (ostensibly to help the family) sometimes only hurt the family more. . . . The more governments try in vain to take the place of the family, the less effective governments will be in performing the traditional and basic roles for which governments are formed in the first place.*¹²

Our country was begun on the understanding that with the help of divine providence, we could pledge all of our lives, fortunes, and sacred honors to secure the right to believe and live in accord with the truth that men are holders of inalienable rights bestowed by God—rights that, if exercised properly, will allow them to choose to maintain life, liberty, and the pursuit of happiness. Even though many of the modern mind-set do not know it, the usurpation by many (sometimes by neglect, sometimes by intentional design) of the right and opportunity of the rising generation to be exposed to and choose to follow traditional Story A values, which were the foundation of the American revolution, exceeds the tyranny experienced by the colonists. This tyranny is greater because it is done in the name of liberty, while in fact it prevents those who are manipulated from

knowing that they—as states, educators, parents, and children—have lost and are losing fundamental rights and freedoms. The time foreseen by Spencer Kimball—when only deep and active belief in the family (and governmental values necessary to sustain such)—has arrived. If the call for concerted action was a suggestion then, it is imperative now. The conflict is eternal, and it will surely span our lifetime. Our personal commitment must be commensurate with the battle. Active assistance—from all disciplines, political parties, religions, and families—is urgently needed. Only by reliance on the same values held by those who founded our country, as well as those who have fought throughout time for the right to choose the right, can we achieve and maintain lasting curriculum objectives that offer support and stability to the family unit in American society.

Footnotes

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 7. Daniel H. Kulp II, *Educational Sociology* (New York: Longmans, Green and Co., 1932), pp. 26-27.
 8. Peter Dobkin Hall, *The Organization of American Culture, 1700-1900: Private Institutions, Elites, and the Origins of American Nationality* (New York: New York University Press, 1982), pp. 214-219.
 9. Marvin Lazerson et al., *An Education of Value: The Purposes and Practices of Schools* (New York: Cambridge University Press, 1985), p. xi.
 10. Ibid.
 11. A more detailed explanation of dissatisfaction with and within the public schools is found in Neil J. Flinders, "Current Educational Reform: Treating Symptoms or Causes" (unpublished paper, Brigham Young University), 1984.
 12. Spencer W. Kimball, "Families Can Be Eternal," *Ensign*, November 1980, p. 5.